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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/040,944	01/09/2002	Vito James Carlucci	884.0051USU	5138

7590 02/03/2005

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EXAMINER

FOSTER, JIMMY G

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/040,944

Applicant(s)

CARLUCCI ET AL.

Examiner

Jimmy G Foster

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-12, 15 and 17-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 15, 17-21 and 23-33 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

Art Unit: 3728

1) Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The introduction of two lid sections in claim 10 constitutes an indefinite double recitation of the lid sections already introduced in claim 9. This makes it unclear how many lid sections are required by the claim.

2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 1-4, insofar as claimed, are rejected under 35 U.S.C. 102(b) as being anticipated by Caccitolo (5,051,725). The claims do not distinguish over the structure of the Caccitolo reference.

In the reference of Caccitolo, there is provided an elongated housing at container 10, and there is provided lid sections of a lid structure/cover 19 at interlocking lids 20,30. The lid sections 20,30 seal at 25,35 along a line that is transverse to a longitudinal axis (i.e. length) of the housing.

The lid sections are each hingedly mounted to opposed ends of the elongated housing by a single pivot (21 for lid section 20 and 31 for lid section 30). With respect to the orientation of Figure 1 of the reference, the mid-line along which the seal extends, runs from the front side to the rear side of the housing.

Art Unit: 3728

With respect to the limitation calling for one or more channels, the recessions R in each of the interlocking portions 25,35 may be said to define channels, insofar as claimed by Applicant.

Although the container is intended to be used as a lockable security container for merchandise, the container is inherently capable of containing hair rollers which have a size smaller than the size of the interior space of the container. Moreover, regarding Applicant's limitation calling for the housing to have one or more supports, this does not distinguish over the bottom 16 of the housing 10 of Caccitolo, since the bottom 16 of the housing of the reference is inherently capable of supporting hair rollers thereon, such as hair rollers light enough to have a weight that does not overcome the strength of the bottom.

4) Claims 1-5, 9-12, 15 and 23-33, insofar as claimed, are rejected under 35 U.S.C. 102(b) as being anticipated by Miller (2,663,392). The claims do not distinguish over the structure of the reference.

In the reference of Miller, there are provided an elongated housing at sink body 10 and a pair of hinged lid sections at 18-20 (for each section). The lid sections seal/close together (col. 2, lines 32-35) along a mid-line which runs transverse to the longitudinal axis of the housing, which is from a front side of the housing to a rear side of the housing when the housing is viewed as shown in Figure 1.

The hinged connection for each lid section is on a single pivot/axes, which would be through the central portion of hinged connection 29. Moreover, the hinged connections of the lid sections are at opposite ends of the housing 10.

Art Unit: 3728

The interior of the lid sections include channels, defined between the ribs 30, for channeling liquid (probably water) from the lid sections into the reservoir of the housing, since the open configurations of the lid sections define inclined draining boards. Additionally, the examiner asserts that when the lid sections are in the closed position over the housing, as shown in Figure 1, the ribs 30 will be capable of acting to channel condensation, when there is some, into the reservoir since natural gravity will cause any water droplets from condensation on the ribs 30 to travel the vertical dimension of the ribs, whereupon when enough liquid has collected on a rib the liquid drop due to the sufficient weight of the liquid into the reservoir of the housing 10. Therefore, although the reference does not appear to disclose such an additional function of the ribs/channels, the capability to perform the function is existent. This capability meets what Applicant has claimed with respect to collecting and directing condensation to the reservoir of the housing.

Although the device of Miller is a storage chest/sink, it is capable of containing heatable hair rollers therein, and this capability meets Applicant's intended use language regarding rollers.

Regarding claims calling for tilting the housing upon a base, the reference of Miller discloses resting the sink upon a cooking stove S (see Fig. 5), which the examiner asserts would constitute a base. Moreover, although it might not be desirable, the sink of Miller would inherently be capable of being tilted on such as base at various angles, as desired, even when the sink's lid sections are open. This capability meets the intended use language claimed regarding tilting the housing on the base.

Art Unit: 3728

5) Claims 17 and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamanaka (3,568,820). The reference of Yamanaka discloses a hair setting assembly/hair curler heater, for holding hair rollers/curler. The assembly of Yamanaka includes a base at container 2, a housing at heating board 5, a lid at 3 pivotably connected to the housing 5 at 20,29 or 32. The housing 5 becomes tilted in the base as shown in the Figure 4.

6) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7) Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Montagnino et al (Des. 317,215) in view of Montagnino et al (Des. 313,285) and Bogan et al (2,659,920). In the reference of Montagnino et al ('215), there are provided, as cumulatively shown in the drawings of the reference, a housing and lid sections individually hinged to opposed ends of the housing. The lid sections close together along a line transverse to the longitudinal extent of the housing, as see in Figure 1.

Although the reference of Montagnino et al ('215) does not show proximity in the closed state of the lid sections to indicate capability of sealing to each other, the reference of Montagnino et al 9'285), at the closure fastener portions shown in Figures 4 and 7-12, suggests that a hair setter cabinet may be provided with a seal between the lid sections thereof for the apparent purpose of fastening the lid sections in the closed position. It would have been obvious in view of Montagnino et al ('285) to

Art Unit: 3728

have providing a sealing capability to the lid sections of Montagnino et al (215) for the purpose of fastening the lid sections in the closed position.

The reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided, having means (spaced concave members 14) for connecting the base to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have further been obvious in view of Bogan et al to have made the container of Montagnino et al with a base connected to the housing so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.

8) Claims 9-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thornbloom, Jr (3,979,007) in view of official notice that it is known to set containers freely down on supporting surfaces/bases or in view of Bogan et al (2,659,920). The reference of Thornbloom, Jr. discloses a cooler, which is intended to hold articles at a lower temperature than the environment. However, the cooler is capable of containing anything which is small enough to be received therein, such as hair rollers. Moreover, the bottom of the cooler, being able to support the weight of articles thereon, is capable of supporting rollers.

In the reference of Thornbloom, Jr, a housing is provided at 2, and the lid sections are provided at 3,4,5. The sealing of the lid sections is made at 31,32, which is transverse to the length of the housing and along center line.

Art Unit: 3728

The examiner asserts that were there to be condensation on the inside of the lid sections when they are closed, the droplets thereof would be channeled by the interior surface of the peripheral rib on the inside 12 of each lid section into the reservoir of the housing 2. Accordingly, the lid sections of Thornbloom, Jr may be considered to be configured to channel condensation from the lid to the housing.

Although the reference Thornbloom Jr. does not disclose a base which supports the housing 2, it is notoriously well known to set a cooler or any container down freely/loosely on a supporting surface, such as a table, the ground, the floorboard of a vehicle, or a shelf. One motivation for doing this is to avoid having to lug the container around all of the time. For such a reason it would have been obvious to have loosely set the cooler of Thornbloom, Jr down on a supporting surface/base. When freely supported, any container, including the cooler of Thornbloom, Jr would be inherently pivotable on the base, such as by tipping.

Alternatively, the reference of Bogan et al, at 7,12,14 and Figure 1, suggests that a container (6) may be provided on its lower portion with means (protuberances 7) to be connected to a base, and that a base (12,14) may be provided, having means (spaced concave members 14) for connecting the base to the container (6), for the purpose of tilting the opening of the container with respect to the horizontal and toward a user, for the purpose of improving access to the contents of the container through the opening of the container. Accordingly, it would have further been obvious in view of Bogan et al to have made the container of Thornbloom, Jr with a base connected to the housing 2, in the manner of Bogan, so as to tilt the container on the base, for the purpose of tilting the opening of the housing toward the user for better access to the curlers in the housing.



Art Unit: 3728

9) Claims 18-21 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yamanaka (3,586,620) in view of Caccitolo (5,051,725).

Although the reference of Yamanaka does disclose the lid as being made of multiple lid sections, the reference of Caccitolo suggests that a lid may be provided as a pair of mutually sealed, hinged lid sections hinged to opposed ends of the length of the container by single pivots for the purpose of making each operable lid portion lighter in weight and less obstructed, for easier opening and closing (see co. 3, lines 37-43). The seals are formed by interlocking channels. Accordingly, it would have been obvious in view of Caccitolo to have made the lid 3 of Yamanaka with a pair of mutually sealed, hinged lid sections, in the manner of Caccitolo, attached to opposed ends of the assembly at opposite ends of the housing and with channels providing the locking seals, for the purpose of reducing the lid weight and reducing any obstruction to the opening of the lid.

10) Claims 9-12, 15 and 23-33 are also rejected under 35 U.S.C. 103(a) as being unpatentable over Miller (2,663,392) in view of official notice that it is known to set a chest down on a surface. It is notoriously well known to set storage chest down loosely on a base surface, such as a floor or the ground to avoid having personally to lug the chest around all of the time. For such a reason it would have been obvious to have loosely set the chest of Miller down on a supporting surface/base. When freely supported, any container, including the chest of Miller would be inherently pivotable on the base, such as by tipping, even while the container is open.

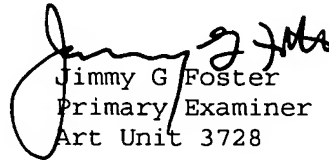
Art Unit: 3728

11) Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (571) 272-4554. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

  
Jimmy G Foster  
Primary Examiner  
Art Unit 3728

JGF  
2 February 2005